IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1165 (MS) OF 2001

(Old No. 837 of 2000)

Panna Lal Nanda,
S/o Shri Jagan Nath,
R/o 44 Civil Lines,
Qasba Roorkee, District-Haridwar. .....Petitioner.

Versus

1. Commissioner, Saharanpur Division, Saharanpur/Controlling Authority, Under U.P. (Regulation of Building Operation), Act, 1958.
2. Prescribed Authority, Regulated Area Roorkee, Distt. Haridwar/Special Divisional Magistrate, Roorkee, District-Haridwar.
3. State of U.P. .....Respondents.

Dated: 04.07.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 22nd March, 1999 and 20.11.1999 passed by the respondent no. 1 as well as respondent no. 2 respectively.

Briefly stated, a notice was issued on 18th March, 1999 regarding the alleged illegal construction by the petitioner. Petitioner has filed objections on the ground that the construction is being raised by the persons, who are running Guru Teg Bahadur Charitable Hospital as well as School for the benefit of the general public and it is a religious work and has prayed for discharging of the notice. However, the

respondent no. 2 passed an ex parte order on 22nd March, 1999 imposing development charges to the extent of 40,000/- and 500/- towards compound fee.

Counsel for the petitioner has submitted that no opportunity was given to the petitioner or to anyone else against whom notice has been issued.

Petitioner has preferred an appeal under Section 15 of the Regulations of Building Operation Controlling Authority/Commissioner being Appeal No. 3 of 1998-99. The Commissioner has dismissed the appeal on the ground of limitation.

The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in ***(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Shood*** as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In ***N. Balakrishnan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases Page 427***, It has been held that law of limitation is founded in public policy on '*the maxim of interest reipublicae up sit finis litium*' i.e. fal the general welfare, it has been held as under:-

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is*

not because on the expiry of such time a bad cause would transform into a good cause".

However, liberty is given to the petitioner to approach the Commissioner in case cause of action still survives by filing an application under Section 5 of the Limitation Act for getting the delay condoned in the appeal.

In case such an application is filed, the Commissioner shall hear the appeal on merits after condoning the delay.

Subject to the aforesaid observation, writ petition is dismissed.

(Rajesh Tandon, J.)

04.07.2006
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